

# **INTERIM POLICY FOR PROSECUTORS IN RESPECT OF CASES OF ASSISTED SUICIDE**

## **Response by the Care Not Killing Alliance**

### **Executive Summary**

This constitutes the response of the Care Not Killing Alliance (CNK) to the public consultation launched on 23 September 2009 by the Crown Prosecution Service (CPS) in regard to its interim policy statement governing the prosecution of cases of assisted suicide in England and Wales. The response consists of this Executive Summary plus:

- a memorandum setting out CNK's assessment of the underlying principles of the policy statement and of those specific prosecution criteria which in our view are open to most serious objection;
- a point-by-point analysis (Annex A) of each of the criteria listed and their categorisation as either Acceptable or Acceptable subject to amendment or Unacceptable;
- a completed proforma (Annex B) providing answers to the specific questions posed in the consultation document.

It is important that the response should be read as a whole and that the specific answers given in Annex B should not be viewed in isolation but taken in conjunction with the explanations given in the memorandum and in Annex A.

We do not regard the interim policy statement as fit for purpose in its present form. There are serious defects both in its underlying principles and in several of the specific prosecution criteria proposed. Though the statement disclaims any intention either to change the law or to offer immunity from prosecution for assisters of suicides, the approach it adopts to clarifying prosecution policy for this offence risks producing these outcomes. In particular, it does not take as its starting point the guideline laid down in the current Code for Crown Prosecutors that "a prosecution will usually take place unless there are public interest factors tending against prosecution" and it gives the appearance of a shift in the role of the CPS from one of enforcing the law other than in exceptional circumstances to one of arbitrating, in an even-handed manner, between the merits and demerits of prosecuting those who assist suicides.

The statement also includes a number of criteria for not prosecuting in cases of assisted suicide which are discriminatory against particular groups of people, such as those who are seriously ill or disabled or who may be suffering from mental disorder, and which effectively would afford to them a lesser standard of protection under the law. A number of the other proposed criteria also pose problems of public safety and require amendment if they are to be acceptable.

The interim policy is in need of reorientation of its structure and revision of many of the specific prosecution criteria that are proposed.

# **INTERIM POLICY FOR PROSECUTORS IN RESPECT OF CASES OF ASSISTED SUICIDE**

## **Response by the Care Not Killing Alliance**

### ***Introduction***

1. This memorandum is submitted by Care Not Killing (hereinafter referred to as CNK) in response to the public consultation initiated by the Crown Prosecution Service (CPS) on 23 September 2009 on the above interim policy. Care Not Killing is a UK-based alliance of individuals and organisations which brings together disability and human rights organisations, healthcare and palliative care groups, and faith-based organisations, with the aims of:
  - Promoting more and better palliative care;
  - Ensuring that existing laws against euthanasia and assisted suicide are not weakened or repealed.
2. CNK's response to the consultation comprises this memorandum, a point-by-point commentary on each of the factors listed in the CPS policy statement as either favouring or tending against prosecution (Annex A) and a completed proforma giving answers to the specific questions posed in the consultation document itself (Annex B).
3. This memorandum is necessary for two reasons. First, the tick-in-the-box approach of the response proforma focuses on the detailed criteria that are proposed for use in assessing whether prosecution for assisted suicide is or is not appropriate and does not allow for comment on the structure or underlying principles of the policy statement itself. These latter are, however, in CNK's view seriously open to question and we feel it necessary therefore to explain in this covering memorandum why we believe that the interim policy is in need of structural as well as detailed amendment.
4. Second, a number of the questions that are posed in the response proforma cannot be answered with a straight Yes or No. While some of the proposed criteria are either acceptable or unacceptable as presented, others may be acceptable if amended or if their meaning is clarified. We feel it is appropriate to explain, where we cannot accept specific criteria or suggest that they should be amended or clarified, why we take this view.

### ***Structure and Underlying Principles***

5. We should make clear that in this section we are not calling into question the requirement for guidelines to be published. The Director of Public Prosecutions (DPP) has been required by the House of Lords (now the Supreme Court) to prepare and publish such guidelines. In CNK's view that decision of the judges was unusual, to say the least, and placed the DPP in an unenviable position. We recognise, however, that the DPP is responding to a requirement laid upon him.

6. We are concerned that the interim policy statement, as it has been presented, poses serious risks of misinterpretation. The statement rightly says<sup>1</sup> that, “while the DPP can issue a policy which sets out the factors he will take into account in deciding whether to prosecute in individual cases, only Parliament can change the law on assisted suicide”. We are pleased also to see the statement<sup>2</sup> that “the DPP cannot assure a person in advance of committing a crime that a prosecution will not be brought, and nothing in this policy can be taken to amount to such an assurance”.
7. These statements are necessary, but they do not go far enough. In particular, there is no mention in the interim policy statement of one of the principles enunciated in the current Code for Crown Prosecutors, namely that “a prosecution will usually take place unless there are public interest factors tending against prosecution”<sup>3</sup>. Indeed, the Code makes clear that, “although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed”<sup>4</sup>.
8. The overall effect of the interim policy statement as it stands is to convey to the reader a rather different message. The statement tells us that “each case must be considered on its own facts and on its own merits. Prosecutors must decide the importance of each public interest factor in the circumstances of each case and go on to make an overall assessment”<sup>5</sup>. It does not, however, signal to the reader that there will be a presumption in favour of prosecution for evidentially demonstrated breach of the law unless there are clear reasons to the contrary. This is a serious and confusing omission which, taken together with the even-handed listing of criteria for and against prosecution, depicts the DPP as an arbitrator between prosecuting and not prosecuting rather than as an upholder of the integrity of the law who has the discretion, in circumscribed circumstances, not to prosecute. To put it another way, the interim policy statement gives the appearance of a policy shift in the centre of gravity away from prosecution in cases of this nature. The reader is left with the impression, not that the law will be enforced unless there are good reasons not to do so, but that an assister of suicide may be prosecuted in some circumstances but not in others. Such an impression, were it to take hold, poses serious dangers for public safety.
9. We recommend therefore that the policy statement be restructured. It should start with a clear statement that assisting a suicide is a criminal offence and that, in the absence of a decision by Parliament to change the law, it will remain so. It should proceed from there to state, in accordance with the Code for Crown Prosecutors, that there will be a presumption in favour of prosecution in cases of assisted suicide unless there are compelling public interest factors that point in the other direction. It should then list what those factors might be, making clear however that each case stands to be judged on its own merits and that no one should undertake action in breach of the law on the false assumption that he or

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<sup>1</sup> Paragraph 2

<sup>2</sup> Paragraph 2

<sup>3</sup> Code for Crown Prosecutors 2004, Paragraph 5.7

<sup>4</sup> Idib

<sup>5</sup> Paragraph 15

she has ticked the boxes necessary to secure what might mistakenly be seen as immunity from prosecution. It should also, referring again to the Code for Crown Prosecutors, make clear that, even if factors tending against prosecution are present, a prosecution will nonetheless often take place, with the courts invited to take any mitigating factors into account in passing sentence. Mitigation exists in almost every criminal case: it should not be conflated by false logic with the public interest. To do so would conflict, for example, with the CPS policy in cases of causing death by dangerous/careless driving, where a ‘nearest and dearest’ exception effectively no longer exists in relation to offences which require no criminal intent.

### *The Criteria*

10. If the revised structure of the policy statement that we have recommended above is accepted, it follows that there will need to be consequential change in the way in which the various criteria are presented. In this memorandum, however, we comment on the criteria as they have been laid out in the interim policy statement. The point-by-point analysis at Annex A follows this structure and the completed proforma at Annex B gives Yes or No responses to the questions posed in the consultation document. However, as observed above, this tick-in-the-box approach is not conducive to a meaningful analysis of the criteria. The answers to the questions that we have given **must** therefore be read in conjunction with the following paragraphs.
11. The criteria for and against prosecution which are set out in the policy statement may be divided for convenience into three categories:
  - A Those that are acceptable as they stand;
  - B Those that might be acceptable if they are amended or clarified;
  - C Those that are unacceptable under any circumstances.
12. Annex A allocates each of the proposed criteria to one or other of these three categories and comments briefly on each. The remainder of this memorandum focuses on the four criteria (Category C above) which we regard as unacceptable under any circumstances.

### *Assisted Suicide and Clinical Health*

13. Among the public interest factors listed as tending against prosecution is the circumstance in which “the victim had a terminal illness or a severe and incurable physical disability or a severe degenerative physical condition”. The reciprocal of this circumstance appears in the list of public interest factors in favour of prosecution. We are firmly of the view that both these factors should be deleted, for three reasons.
14. First, it is unacceptable in principle that some members of society should be singled out in the policy statement as being, in effect, more eligible for assistance with suicide than others by reason of their clinical health. It is surely a

fundamental principle of the criminal law that its protection should be afforded equally to all irrespective of their state of health. To suggest therefore that the presence in the victim prior to his or her death of a terminal or degenerative illness or a severe physical disability should be a factor mitigating in deciding whether or not the assister of that person's suicide should or should not be prosecuted is discriminatory. While we are fully aware that the campaigning that is taking place to change the law on assisted suicide has been focused around persons with medical conditions, the administration of the law must take care not to adopt, albeit unwittingly, the political assumptions of the campaigners and should regard, and be seen to regard, all citizens equally.

15. Second, we have noted with approval the statement in the introduction to the policy statement that "only Parliament can change the law". In this context it is pertinent to point out that Parliament has twice in the last four years considered and rejected proposals to legalise assisted suicide for terminally ill people. For the DPP to suggest against this background that he will regard the presence in a victim of terminal illness – and a wide range of other clinical conditions – as a factor against prosecution for assisted suicide could be regarded as perverse and, arguably, an infringement of Parliament's authority.
16. Third, the range of clinical conditions envisaged is very wide indeed. It covers not only people who are dying but also others living with chronic illness and/or disability who have many years of life ahead of them. It could be applied to conditions such as heart disease, insulin-dependent diabetes, arthritis and stroke with which large numbers of people live, often for decades, with the support of effective medication and care. It could also be applied to a substantial proportion of people who are disabled. Even in those few countries where assisted suicide has been legalised, it has not been applied anything like as widely as this.

#### *Assisted Suicide and Mental Capacity*

17. Four of the factors listed in the policy statement bear on this issue, and they do so in a somewhat confused and contradictory manner. The factors in question are:

##### In favour of prosecution:

"The victim's capacity to reach an informed decision was adversely affected by a recognised mental illness or learning difficulty"

"The victim did not have a clear, settled and informed wish to commit suicide; for example, the victim's history suggests that his or her wish to commit suicide was temporary or subject to change"

##### Against prosecution

"The victim had a clear, settled and informed wish to commit suicide"

"The victim had previously attempted to commit suicide and was likely to try to do so again".

18. Starting with the last of these factors, we are concerned to see that a history of attempted suicide is being regarded as a factor tending against the prosecution of someone who has assisted that person's suicide. It appears to adopt or contemplate the false logic of Ludwig Minelli of the Swiss organisation Dignitas – that mental illness may be regarded as a qualifying criterion for assistance with suicide - in contrast to which the Swiss authorities are now examining Dignitas and any other 'clinics' of its type and considering criminalising their activities.
19. Suicidal tendencies are normally regarded as evidence of either depression or mental disorder and as a reason for treatment and care in order either to redress the condition or to place the person concerned out of harm's way. Where, one might ask, would the last of these four proposed criteria leave the management of such institutions as prisons or mental hospitals in which prisoners or patients considered to be at risk of self-harm are placed on 'suicide watch' in order to prevent or frustrate suicide attempts? What about paramedics or doctors and nurses in hospital A&E departments who, under existing arrangements, are required to try and resuscitate those who have attempted suicide? Might failure to prevent the suicide of a suicidal inmate or to revive a patient admitted to hospital with a history of suicide attempts be justified as 'negative assistance' given to a person who had tried to end his or her life before and was likely to do so again?
20. These difficulties arise because the policy statement is making a questionable assumption – namely, that “a clear, settled and informed wish to commit suicide” indicates a state of rationality rather than one of mental disorder. While it is conceivable that this might be the case, it does not follow that persistent statements of a wish to commit suicide or repeated attempts to carry out the act arise out of sound mental processes simply because they are persistent or repeated. Indeed, it is arguable that the contrary is the case – that a persisting wish for, or repeated attempts to commit, suicide are more often a sign of mental disorder of one kind or another. We hardly need to remind the DPP that a great many people with a firm commitment to suicide recover completely and go on to live contented lives.
21. The last three criteria listed in Paragraph 17 above should therefore be removed as being inconsistent with the first, which rightly recognises the role that mental disorder or incapacity may play in a wish for or attempts at suicide. These three criteria also suffer from the defect referred to in the preceding section – namely, that they single out as more eligible for assistance with suicide members of the community who have specific psychological or mental conditions and they are thus discriminatory.

#### *Family Members and Close Friends*

22. Another of the factors listed in the policy statement as tending against prosecution is where “the suspect was the spouse, partner or a close relative or a close personal friend of the victim within the context of a long-term and supportive relationship”. The rationale behind this criterion would appear to be that persons who fall within these categories can be expected to have the best interests of the victim at heart.

23. There are two reasons why this conferring of special category status on such persons cannot be justified. One is that the proposal flies in the face of real-world experience. While it is conceivable that a spouse or close family member might assist a suicide out of a feeling of compassion for the victim, the reality is that many cases of abuse, and especially elder abuse, are committed within the family environment. The notion that those closest to the victim are necessarily what the media are fond of calling ‘loved ones’ is fallacious. It is one thing to argue, as the policy statement does elsewhere, that assistance with suicide that was given as an act of compassion might be regarded as a factor tending against prosecution. But to suggest that such compassion is the property of family members and close friends is dangerously naïve.
24. The second reason for deletion of this proposed special category status is that it is incompatible with another of the factors listed – namely, that the suspect did not act from mixed motives, including a desire for personal gain. One of the factors listed in the policy statement as favouring prosecution is that:
- “the suspect was not wholly motivated by compassion; for example, the suspect was motivated by the prospect that they or a person closely connected to them stood to gain in some way from the death of the victim”*
- This is mirrored in one of the factors which are said to argue against prosecution, namely that “the suspect was wholly motivated by compassion”.
25. The reality is that in most cases it will be precisely those closest to the victim who stand to gain from the victim’s death. Of course, the policy statement talks of suspects who are “motivated by the prospect” of personal gain rather than who stand to gain. But how, we would ask, is the DPP to establish such motivation? In the real world people are generally motivated by a multiplicity of reasons for their actions: it is rare that someone can be said to be “wholly motivated” by one consideration to the exclusion of all others. This is even more the case when it is recognised that personal gain encompasses not only financial gain, as is envisaged in the example given in the policy statement, but other forms of gain, including freedom from an exhausting care burden or from the tiresome demands of a difficult elderly relative. It would be surprising if a relative’s agreement to assist a suicide, or at least not to dissuade a family member apparently bent on such a course, were not coloured at least in part by factors such as these.
26. Simply adding the qualifying phrase “within the context of a long-term and supportive relationship” does not resolve this problem. It is not uncommon for family relationships that appear loving and supportive from the outside to be quite different in reality. The policy statement as it stands adopts stereotypical images of caring relatives and ‘loved ones’ which are, in many instances, not a reflection of the real dynamics of family relations. We strongly recommend therefore deletion of special category status for spouses, partners and close family members and personal friends as assisters of suicides.

### *Victims Needing or Not Needing Assistance*

27. Another factor which is proposed as tending against prosecution is that “the victim was physically unable to undertake the act that constituted the assistance him or herself”, which has its reciprocal among the factors said to favour prosecution. While we understand the argument on which this factor appears to be based – namely, that an assister with suicide might have found it harder to refuse assistance to a victim who could not have committed the act unaided – we are concerned, once again, about the singling out of categories of people as, in effect, more eligible for assistance with suicide than others and about the potential for increased abuse as a consequence of this factor appearing in the list of those tending against prosecution. A person unable to take the action necessary to end his or her own life may also, in some circumstances, be unable to communicate with sufficient clarity that that is what he or she earnestly desires or that there has been a change of heart in the matter. People unable to commit suicide are often unable to do most other things and are therefore particularly vulnerable to abuse by others. We therefore believe that this factor should be removed, though its reciprocal in the list of factors favouring prosecution may be allowed to stand.

### *Other Issues*

28. We are concerned also about the integrity of the process by which cases of assisted suicide are being assessed for prosecution. It is our understanding that, if credible evidence exists that an act of assistance with suicide has taken place, the evidential test has been fulfilled, and that at that point the public interest test is engaged. It appears to us, in relation to some “Swiss” suicides, that there have been instances where clear evidence of assistance with suicide (within the jurisdiction of England and Wales) has been found (in some cases the assister has actually admitted the offence) but the CPS has ruled that the evidential test has not been passed. This points to inconsistency of approach. We suggest therefore that all cases of suspected assisted suicide should be considered by the DPP himself or senior headquarters staff.
29. We have concerns also about one aspect in particular of how the public interest test is being applied. We recognise that a factor in this test is the probability of a conviction if a prosecution is undertaken and we fully understand why, to take an example, the DPP might decline to prosecute, even if there is clear and compelling evidence that an offence has been committed, if the assistance given was of only a marginal nature (eg booking a flight ticket or an hotel room) or if the assister was not in any way involved in instigating the offence. However, we are mindful that juries consist of members of the community and, as such, are exposed to media reporting and campaigning propaganda and we are concerned lest decisions might be taken not to prosecute, even where there is irrefutable evidence of assistance with suicide having been given and where such assistance was significant, on the basis that, while the suspect was clearly guilty of a serious offence under Section 2 of the Suicide Act 1961, a jury would be unlikely to convict because of its prejudices on the subject. That would seem to us to be an extension of the public interest test not applied to other offences.

30. We would therefore wish to see the policy statement make clear the need for the DPP, in assessing cases against the public interest test, to ignore the possibility of perverse verdicts by juries in coming to a decision on whether or not to prosecute. We recognise the risk that a succession of such verdicts could have the effect of increasing demands for a change in the law. The issue inevitably would then be pursued in Parliament for decision: plainly that is the appropriate way to change the law, rather than by legal change through administrative stealth, an approach expressly and rightly rejected by the DPP.

31. We therefore recommend that the explanation of the assessment process that is currently contained in Paragraphs 6-18 of the interim policy statement should make clear that:

- (a) all cases of alleged assisted suicide will be assessed by the DPP himself or his senior headquarters staff;
- (b) in assessing, as part of the public interest test, the prospect of a conviction being obtained, the DPP will not have regard to the possibility of a perverse verdict being delivered by a jury.

### *Summary of Conclusions*

32. We do not regard the interim policy for prosecutors in respect of cases of assisted suicide as fit for purpose without significant amendment. In particular, it has the appearance of a policy shift in the centre of gravity in the enforcement of the law, away from a position in which a prosecution can be expected unless there are compelling public interest factors to the contrary<sup>6</sup>. It also includes a number of specific prosecution and non-prosecution criteria that are unacceptable and others which, while acceptable in principle, are in need of clarification or amendment<sup>7</sup>. Nor does it make sufficiently clear how the decision-making process is conducted<sup>8</sup>.

33. At Annex A is a point-by-point commentary on each of the criteria in favour of or against prosecution that are listed in the policy statement, with CNK's response to each graded as either Acceptable (Category A) or Acceptable subject to clarification or amendment (Category B) or Unacceptable in any circumstances (Category C).

34. At Annex B is a completed proforma answering, insofar as it is possible to answer them meaningfully, the specific questions posed in the consultation document. As the proforma accepts only Yes or No answers, we have responded with **Yes** to those criteria which fall into Categories A and B and with **No** to those falling within Category C. However, a number of our **Yes** responses are qualified, as it made clear in Annex A, and those responses must be read in the light of these qualifications.

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<sup>6</sup> See Paragraphs 5 to 9 above

<sup>7</sup> See Paragraphs 10 to 27 above

<sup>8</sup> See Paragraphs 28 to 31 above

**INTERIM POLICY FOR PROSECUTORS IN RESPECT OF CASES OF ASSISTED SUICIDE**

**Assessment by Care Not Killing of Suggested Prosecution Criteria**

This Annex assesses the acceptability of each of the factors proposed in the policy statement as either favouring or not favouring prosecution. It categorises each proposed factor as Acceptable (A) or Acceptable subject to clarification or amendment (B) or Unacceptable in any circumstances (C). It is intended to be read in conjunction with Annex B, which provides Yes/No answers to the specific questions posed in the consultation document.

*The factors listed in the guidelines for and against prosecution*

*(a) In favour of prosecution*

1. *The victim was under 18 years of age*

B – Acceptable provided that there is no implication here that assistance given to a victim over the age of 18 will be regarded as a factor not favouring prosecution (we are pleased to see that the reciprocal of this factor does not appear in that list) and that the purpose here is simply to make clear that assistance given to a victim under the age of 18 will be regarded as a circumstance aggravating the offence.

2. *The victim's capacity to reach an informed decision was adversely affected by a recognised mental illness or learning difficulty*

B - Acceptable if amended to make clear that this covers all diagnostically defined mental disorders, including depression, and mental incapacity. It is also suggested that the word 'recognised' be removed as this could deter the seeking of a psychiatric opinion.

3. *The victim did not have a clear, settled and informed wish to commit suicide – for example, the victim's history suggests that his or her wish to commit suicide was temporary or subject to change*

**C - Unacceptable** on two grounds:

- The assumption underlying this factor is that a persistent wish on the part of a person to commit suicide necessarily stems from rational thought processes and sound psychology. It implies that the presence in the victim of such a state of mind constitutes grounds for not prosecuting. This implication finds expression in Factor No.11 among those listed as favouring non-prosecution – namely, that “the victim had previously attempted to commit suicide and was likely to try to do so again”. A ‘clear and settled wish’ to commit suicide (it is not clear what is meant by an ‘informed wish’ to do so) could well indicate the presence of mental illness. In this respect, therefore, this factor must be regarded as incompatible with that at No. 2 above.

- It is not apparent how ‘a clear, settled and informed wish to commit suicide’ is defined or how its presence or absence is to be established after the victim’s death. The existence of such a wish may have been made clear by the victim prior to death, but there may be nothing more to go on than the suspect’s assurance that it existed. Given the gravity of the offence, there should be no presumption of a “clear, settled and informed wish to commit suicide” unless there is objective evidence - for example, corroborative statements from others who cannot be regarded as partial to the suspect’s position and/or a written statement to a solicitor by the victim before his or her death – that such a wish had existed.

4. *The victim did not indicate unequivocally to the suspect that he or she wished to commit suicide.*

B – Acceptable on the understanding that the reciprocal of this circumstance (see Factor No 2 against prosecution) is not regarded as constituting grounds for not prosecuting.

5. *The victim did not ask personally on his or her own initiative for the assistance of the suspect.*

B – As for No 4 above. Acceptance of this factor does not imply acceptance of Factor No. 3 against prosecution.

6. *The victim did not have:*

- *a terminal illness;*
- *a severe and incurable physical disability; or*
- *a severe degenerative physical condition.*

**C - Unacceptable** on three grounds:

- This is a circumstance of a very different character from the others. Age, consent, coercion etc are all circumstances that apply to the population as a whole, whereas this one singles out persons with a described range of clinical conditions. As such, it implies that the law should apply less rigorous standards to cases of assisted suicide in their case than in those of other persons. Or, to put it another way, it implies that people with these clinical conditions do not deserve the same stringent standards of legal protection as do the rest of us. The law must protect all citizens equally and without discrimination based on health status.
- The conditions listed cover a very wide swathe of the population. They include people with common illnesses such as, for example, chronic heart disease, Parkinson’s disease, insulin-dependent diabetes, stroke, arthritis and many forms of disability. There are not many people with impaired health who would not fall within this catchment area, which is much wider than any proposals for legalising assisted suicide have encompassed.

- Parliament has firmly rejected, twice within the last four years, attempts to legalise assistance with suicide for people who are terminally ill. To suggest, as this factor does, that the presence of terminal illness – and of a large number of other clinical conditions besides – should constitute grounds for not prosecuting in cases of assisted suicide flies in the face of the declared will of Parliament. As such, it is arguably an infringement of Parliament’s authority to legislate.

**This factor should be removed from the list as inappropriate.** The link between assisted suicide and serious illness is one that has been carefully forged by pro-euthanasia campaigners with a view to making their proposals more palatable to Parliament and the public. It disguises the reality of what is being proposed. It is inappropriate that the DPP’s policy statement should conform to this politically motivated agenda.

7. *The suspect was not wholly motivated by compassion – for example, the suspect was motivated by the prospect that they or a person closely connected to them stood to gain in some way from the death of the victim.*

- B - Acceptable subject to amendment to remove references to compassion as a sole motivation, which is impossible to establish with any certainty, and provided that reference is made to an assister’s position of standing to gain from the victim’s death rather than to being motivated by the prospect of personal gain as a result, which also is impossible to establish. Something along the following lines might be appropriate:

*“The suspect, or a person or persons closely connected to the suspect, stood to gain, whether financially or otherwise, from the death of the victim”.*

To suggest such an amendment is not to suggest that every assister who stands to gain in any way from a victim’s death should necessarily be prosecuted. The message needs to be conveyed, however, that any person in this situation should expect to be prosecuted unless there are strong factors tending against prosecution.

8. *The suspect persuaded, pressured or maliciously encouraged the victim to commit suicide, or exercised improper influence in the victim’s decision to do so; or did not take reasonable steps to ensure that any other person did not do so.*

- B - Acceptable provided that ‘maliciously’ and ‘improper’ are deleted. Any encouragement to suicide and any influence over such a decision should be considered improper and to be grounds for prosecution.

9. *The victim was physically able to undertake the act that constituted the assistance him or herself*

- B – Acceptable subject to deletion of the reciprocal factor (see Factor No 8 of those suggested as not favouring prosecution). It is one thing to argue that aiding the suicide of someone who did not need such help is an aggravation of the offence. To suggest, however, as Factor No 8 in the reciprocal list does, that helping a

person to kill him or herself who was unable to do so unaided is less deserving of prosecution is to put such vulnerable people at heightened risk of abuse.

10. *The suspect was not the spouse, partner or a close relative or a close personal friend of the victim.*

### **C - Unacceptable**

This factor is founded on a stereotypical and inaccurate perception of family relationships – namely, that family members and others close to a victim invariably have his or her best interests at heart and can be more relied on than others not to exert coercion, manipulation or other influence to seek death. This concept of relatives as being necessarily ‘loved ones’, which reflects media perceptions and biased campaigning propaganda, is out of line with real world experience, in which families and close relationships are the most common environment in which murder, violence and abuse (physical, emotional or financial) are encountered. It is therefore dangerously naïve to give such persons special category status in making decisions about prosecution.

11. *The suspect was unknown to the victim and assisted by providing specific information via, for example, a website or publication, to the victim to assist him or her in committing suicide*

A - Acceptable

12. *The suspect gave assistance to more than one victim who were not known to each other.*

B – Acceptable provided that “*who were not known to each other*” is deleted.

13. *The suspect was paid by the victim or those close to the victim for their assistance*

A - Acceptable

14. *The suspect was paid to care for the victim in a care/nursing home environment.*

B – Acceptable subject to clarification that this factor covers not only paid staff in care and nursing homes but others providing care in the home environment and all health care professionals carrying out their duties anywhere – hospitals, GP surgeries, clinics, the home etc. A propos this latter point, we recommend that an additional factor favouring prosecution be added as follows:

*“The suspect was a physician, surgeon, nurse or other health care professional and the victim was under his or her care”*

15. *The suspect was aware that the victim intended to commit suicide in a public place where it was reasonable to think that members of the public may be present.*

A - Acceptable

16. *The suspect was a member of an organisation or group the principal purpose of which is to provide a physical environment [whether for payment or not] in which to allow another to commit suicide.*

B - Acceptable provided that “or client” is added after “a member”, “the principal purpose” is replaced by “one purpose” and “or information or resources to assist another to commit suicide” is inserted at the end.

***(b) Against prosecution***

1. *The victim had a clear, settled and informed wish to commit suicide.*

**C - Unacceptable** – This factor is the reciprocal of Factor No. 3 favouring prosecution and is unacceptable for the reasons stated under that heading.

2. *The victim indicated unequivocally to the suspect that he or she wished to commit suicide.*

**C – Unacceptable** – While assistance with suicide that is given in the absence of a request from a victim is clearly a factor in favour of prosecution, it does not follow that the presence of such a request – even if it could be proved – constitutes valid grounds for not prosecuting. Many people, in moments of despair, indicate a wish to commit suicide but in a civilised society these statements are not taken at their face value.

3. *The victim asked personally on his or her own initiative for the assistance of the suspect.*

**C - Unacceptable** – As for No 2 above.

4. *The victim had:*

- *a terminal illness;*
- *a severe and incurable physical disability; or*
- *a severe degenerative physical condition.*

**C– Unacceptable**, for the reasons set out in response to Factor No 6 favouring prosecution, of which this is the reciprocal. **This factor should be removed from the list.**

5. *The suspect was wholly motivated by compassion.*

B – Acceptable subject to amendment. It is next to impossible to establish whether an assister of a suicide was “wholly motivated by compassion”. We would suggest re-casting of this factor along the following lines:

*“The suspect, or a person or persons closely connected to the suspect, did not stand to gain, whether financially or otherwise, from the death of the victim”*

For explanation, see our comment on Factor 7 favouring prosecution above.

6. *The suspect was the spouse, partner or a close relative or a close personal friend of the victim, within the context of a long-term and supportive relationship.*

**C - Unacceptable** This is the reciprocal of Factor No. 10 favouring prosecution and is unacceptable for the reasons set out in relation to that factor. Though an attempt appears to have been made here to qualify the close relationships that are proposed for special category status, it is insufficient to remove the difficulty that family and other close relationships are often manipulative and can become coercive notwithstanding appearances to the contrary to outsiders.

7. *The actions of the suspect, although sufficient to come within the definition of the offence, were of only minor assistance or influence, or the assistance which the suspect provided was of a consequence of his or her lawful employment.*

B – Acceptable subject to clarification of (a) what constitutes “minor assistance or influence” and (b) what lawful employments are covered – and that the latter do not include medical or nursing care.

8. *The victim was physically unable to undertake the act that constituted the assistance him or herself*

**C - Unacceptable** Though the reciprocal of this factor (Factor 9 favouring prosecution) can be accepted as tending to discourage assistance with suicide, this one cannot, implying as it does that persons who are unable to commit suicide merit a lower standard of protection by the law than do others. As such, it is discriminatory. If it is considered that removal of this factor necessitates removal of Factor No. 9 favouring prosecution, then both should be removed. But this factor should not remain.

9. *The suspect had sought to dissuade the victim from taking the course of action which resulted in his or her suicide.*

A - Acceptable

10. *The victim had considered and pursued to a reasonable extent recognised treatment and care options*

**C – Unacceptable** This factor is open to the same objection as No. 4 above – namely, it forges a link between illness/disability and assisted suicide that is unacceptable in principle for the reasons set out in our comment on Factor No.6 favouring prosecution.

11. *The victim had previously attempted to commit suicide and was likely to try to do so again.*

**C - Unacceptable** This is effectively the reciprocal of Factor No. 3 favouring prosecution and cannot be accepted for the reasons set out there.

12. *The actions of the suspect may be characterised as reluctant assistance in the face of a determined wish on the part of the victim to commit suicide.*

A - Acceptable

13. *The suspect fully assisted the police in their enquiries into the circumstances of the suicide or the attempt and his or her part in providing assistance.*

A- Acceptable